

JOHN W. SAVAGE

IBLA 74-164

Decided June 24, 1974

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting public sale application C-13944.

Affirmed.

Oil Shale: Generally--Oil Shale: Withdrawals--Public Sales: Generally--Public Sales:  
Sales under Special Statutes

A public sale application filed pursuant to the Unintentional Trespass Act of September 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), embracing lands which the records show to be withdrawn by Executive Order No. 5327 of April 15, 1930, is properly rejected.

APPEARANCES: John W. Savage, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John W. Savage has appealed from a decision of the Colorado State Office, dated December 7, 1973, rejecting his public sale application C-13944, filed pursuant to the Unintentional Trespass Act of September 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and the regulations thereunder, 43 CFR, Part 2785 (1971).

The application was rejected on the stated basis that:

State Office records show that all the above-described lands are withdrawn from entry, exchange, sale, or other disposition by Executive Order No. 5327 of April 15, 1930 (for oil shale). An application filed for public sale while the withdrawal is in effect must be rejected. See Louis Signalness, A-29640 (September 4, 1963); Leonora W. Luntsford, A-29927 (November 26, 1963); Gino Martini, A-29467 (July 25, 1963).

Appellant asserts that the decision below is erroneous on the following grounds:

- (1) Executive Order No. 5327 of April 15, 1930, does not apply to the land in question.
- (2) Land does not contain oil shale.
- (3) Decisions by the Department of Interior have ruled that this land, and land similarly situated, is not oil shale land.
- (4) Actions by the U.S.G.S. in similar situations have shown that similar land is not subject to said withdrawal.
- (5) Rejection of application was arbitrary and capricious.

The basic question in issue is whether the withdrawal, if it affects the lands, is preclusive, either as a matter of law or policy, of favorable action on the application. We therefore look to the terms of the statute. Section 1 of the Unintentional Trespass Act, 43 U.S.C. § 1431, provides as follows:

The Secretary of the Interior is authorized, on his own motion or on application of an owner of contiguous lands, and upon a finding that it is not needed for public purposes, to sell at public auction any tract of public domain not exceeding one hundred and twenty acres that has been or is now subject to unintentional trespass, as determined by the Secretary, and that contains some land which has been or can be put to cultivation but which is insufficient because of climatic, topographic, ecologic, soil or other factors to justify a classification as proper for disposal under the homestead or desert land laws. Except as provided in section 1432 of this title, the tract shall be sold to the highest bidder. Except as provided in section 1433 of this title, no tract shall be sold for less than its appraised fair market value. (Emphasis supplied)

The term "public domain" means land which is subject to the operation of the public land laws. Barker v. Harvey, 181 U.S. 481, 490 (1901); Lund v. Nichols, 177 Okla. 65, 57 P.2d 592, 594 (1936). Land which is withdrawn from all forms of appropriation, as E.O. 5327 purports to do, is not subject to disposal under 43 U.S.C. §§ 1431-1435 (1970). John C. Amonson, 8 IBLA 346 (1972).

The grounds of appeal tendered by appellant are mere assertions and do not vitiate the conclusions reached below. See Heath B. Fowler, 8 IBLA 376 (1972); John R. Shelburne, 8 IBLA 115

(1972); Kelly B. Hall, 4 IBLA 329 (1972). Appellant cannot expect the Department to assume his burden of finding reversible error in the decision below. Mrs. J. W. Moore, 8 IBLA 261 (1972).

A determination by the Geological Survey that lands contain deposits of oil shale and are therefore withdrawn by Executive Order 5327 of April 15, 1930, as supplemented by P.L.O. 4522 of September 13, 1968 (33 F.R. 14349-14350), will not be disturbed in the absence of a clear showing that the determination was improperly made, Heath B. Fowler, *supra*. No such showing has been made. The public sale application was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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Martin Ritvo  
Administrative Judge

